

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	6/2013/0135/DM/VP
FULL APPLICATION DESCRIPTION:	Variation of condition 3 of 6/2005/0327/DM to allow external seating on east side of front courtyard
NAME OF APPLICANT:	Mrs Karen Birch
ADDRESS:	The Laurels, 16 High Green, Gainford, Darlington. County Durham, DL2 3DL
ELECTORAL DIVISION:	Barnard Castle East
CASE OFFICER:	Adrian Caines adrian.caines@durham.gov.uk 03000263943

DESCRIPTION OF THE SITE AND PROPOSALS

The site

1. The Laurels is a Grade II listed Georgian building located on the northern side of Gainford Village Green and within the conservation area. The buildings either side are also grade II listed.
2. The property is in use as a coffee shop on the lower floors. The coffee shop is accessed from the front where there is a cobbled patio either side of a path which leads from a short flight of steps to a central front door. The property is flanked to west by a dwelling no.15 High Green, which has a fence and trellis along the common boundary, and to the east by the Academy Theatre with flats above. To the south is the village green.

The proposal

3. The application seeks to vary condition 3 of permission 6/2005/0327/DM to allow external seating for the coffee shop, but restricted to the eastern side of the forecourt only and limited to the hours between 11.00-17.00 Monday to Saturday and 11.00 to 16.00 on Sundays. The space could accommodate about 5 small tables, which will remain outside to avoid the need to set up and take down.
4. Permission 6/2005/0327/DM relates to the original change of use of the property from a doctors surgery to a tea room. Condition 3 states:

There shall not be any external seating outside of the property without the prior written consent of the Local Planning Authority.

Reason: In order to protect the residential amenities of the locality and the occupiers of adjoining residential properties.

5. The application has been called to the Committee by Councillor Rowlandson because of the planning history and concerns about noise.

PLANNING HISTORY

6. Since permission was first granted for the change of use to a tea room/café (6/2005/0327), there have been a number of unsuccessful attempts, including a failed appeal, to gain planning permission for removal and variation of conditions 3 and 2 for outside seating and extension of opening hours.
7. 6/2008/0121 was refused on 02.05.2008 for removal of condition 3 to allow outdoor seating and variation of condition 2 to extend opening hours to 23.00, as well as variation of condition 4 to allow functions.
8. 6/2008/0297 was refused on 26.08.2008 for variation of conditions 2 and 3 to allow outdoor seating and extend opening hours to 20.00.
9. 6/2008/0429 was refused on 14.01.2009, and then dismissed at appeal, for variation of conditions 2 and 3 to allow outdoor seating on the east side of the patio and extend opening hours to 20.00.
10. 6/2009/0319 was refused on 18.11.2009 for variation of condition 2 to extend opening hours to 19.30, 50 days per year.

PLANNING POLICY

NATIONAL POLICY:

11. On March 27th 2012 the Government published the National Planning Policy Framework (NPPF). This supersedes all previous PPS and PPG documents. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.
12. A key aim of the NPPF in chapter 1 is building a strong competitive economy. It says significant weight should be placed on the need to support economic growth through the planning system. To help achieve economic growth, local planning authorities should act proactively to meet the development needs of business and support an economy fit for the 21st century. Another key aim in chapter 3 is supporting a prosperous rural economy. It says that local authorities should promote the retention and development of local services and community facilities that benefit businesses communities and visitors in rural areas. Chapter 12 emphasises the desirability of sustaining and enhancing the significance of heritage assets and the requirement for new development to make a positive contribution to local character and distinctiveness.

LOCAL PLAN POLICY:

13. The following saved policies of the Teesdale District Local Plan are considered to be consistent with the NPPF and therefore relevant in the determination of this application:
14. *Policy GD1 (General Development Criteria)* Development will be permitted where among other things it is in keeping with the character of the area and would not unreasonably harm the amenity of occupants of adjoining sites.
15. *Policy BENV3 (Development Affecting Listed Buildings)* Development which would adversely affect the character or the setting of a Listed building will not be permitted.
16. *Policy BENV4 (Development within Conservation Areas)* Development within conservation areas will only be permitted provided that among other things the proposal respects the character of the area and does not generate excessive environmental problems which would be detrimental to the character and appearance of the conservation area.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.planningportal.gov.uk/england/government/en/1020432881271.html> for national policies; <http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=8716> for Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

17. Gainford Parish Council – No objection, but would like to see the tables and chairs removed each night.
18. Highways Authority – Confirmed they did not wish to be consulted on this proposal and had no comments to make. They had no objection to the original proposal.

INTERNAL CONSULTEE RESPONSES:

19. Design and Conservation – no objection
20. Environmental Health – Discussions with the Environmental Health Officer suggested there was no need to consult because the hours of use for the patio would be tighter than what they would be likely to recommend and the premises is not licensed for alcohol. Comments on previous applications were only in relation to internal sound attenuation, which is not relevant to this proposal.

PUBLIC RESPONSES:

21. The application was publicised in the press, a site notice was posted outside the property and letters were sent to adjoining properties.
22. 4 objections have been received. In summary the concerns raised relate to the potential noise and odour impact on neighbouring properties and the area, loss of

privacy to neighbouring properties, the potential for the presence of tables and chairs to attract vandals, as well as added competition for parking spaces because of additional customers. Attention is also brought to the planning history for the site which includes refusal of similar proposals and a dismissed appeal.

APPLICANT'S STATEMENT:

23. In making this application the applicant hopes to improve the quality and feel of the service provided by the coffee shop so strengthening the amenity provided to the village and the sustainability of the business.
24. The majority of customers using the Laurels are walkers and older residents of the village supplemented by a smaller amount of passing trade. Given this profile it is certainly not anticipated that the use of a small number of outside tables on limited hours will in any way detract from the peaceful atmosphere of the village green, indeed it must surely be seen as an enhancement.
25. Historically the area of the village green has been the centre of the commercial life of the village sustaining a significant number of small businesses which along with institutions such as the school, pubs and theatre give the village the sense of community and vitality which allow it to sustain an individual identity rather than simply become a dormitory suburb to the larger nearby towns.
26. The Laurels recently endured a period of closure during which the owners reassessed the overall viability of the business. It reopened to general and wide support but viability continues to be an issue and the applicants humbly request the committee grant this application to provide support to their efforts to make a success of the business both for themselves and for the village and people of Gainford.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at Spennymoor Council Offices..

PLANNING CONSIDERATIONS AND ASSESSMENT

27. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the impact on the residential amenity of neighbours and impact on the character, appearance and setting of the conservation area and listed buildings.

Principle of development.

28. The proposal seeks to remove condition 3 from permission 6/2005/0327, which prevents use of the patio for outdoor seating. The reason for applying condition 3 in the first place was *"In order to protect the residential amenities of the locality and the occupiers of adjoining residential properties"*. The proposal must therefore be considered in respect of the potential impact on the living conditions of neighbouring properties from potential noise and disturbance associated with use of the patio in conjunction with the coffee shop.

29. The planning history for the site details a number of attempts to remove the outdoor seating restriction from permission 6/2005/0327, all of which have been refused. The refusal of application 6/2008/0429, which included limiting the outdoor seating area to the eastern side of the patio is the most relevant to this new proposal. That refusal was taken to appeal, but the appeal was also unsuccessful. The planning history and appeal decision are material considerations to take into account.
30. Particular attention has therefore been paid to the Inspector's decision from the 2009 appeal in which he concluded that external seating on the eastern side of the patio to the front of the premises between 08.30 and 18.00 would have an unacceptable impact on neighbours.
31. This latest application is however materially different to the previously refused proposals. Unlike all the other applications, this one does not propose any extension of the permitted opening hours of 08.30 to 18.00 and the patio use is to be further restricted within these hours from 11.00-17.00 Monday to Saturday and 11.00 to 16.00 on Sundays, whereas the refused proposal was for use between the whole of the current permitted hours 08.30 to 18.00.
32. There has also been a material change in planning policy since the previous decisions with the national Planning Policy Framework (NPPF) coming into force. There is now much stronger emphasis in the NPPF to support the needs of local business, particularly where it would promote the retention and development of local services and facilities that benefit communities and visitors in rural areas. It says that significant weight should be placed on the need to support economic growth through the planning system. The protection of neighbour amenity must therefore be weighed against the aims of supporting economic growth and the viability of the business and service it offers to the community.
33. The patio presents itself visually as a suitable and obvious location for outdoor seating and its elevated position provides an attractive outlook over the village green. The patio also benefits from its southerly aspect. It is therefore understandable why the coffee shop would want some outdoor seating in this area and outdoor seating would no doubt add to the vitality of the premises and attractiveness to customers, which would benefit the business economically. The NPPF advises that this factor should carry significant weight in the balancing exercise.
34. In respect of balancing the economic benefits with protection of neighbour amenity, it is important to understand the nature of the current restriction. Condition 3 only prevents outdoor seating; it does not prevent use of the patio. It is therefore entirely possible for customers to still congregate around any part of the patio, including right on the boundary with no.15, so long as they are not making use of any seating. All customers entering and leaving the premises also walk along the path at the front so there is already activity in this area and potential for people to stop and talk, or even carry their drink outside.
35. In terms of privacy concerns raised by no.15, restricting the outdoor seating to the eastern half of the patio would certainly help reduce the impact on the adjacent dwelling no.15 by keeping the use away from that property's boundary and bay window. The existing boundary treatment, combined with the separation should ensure that there would not be any unacceptable loss of privacy to no.15 from the seating area and the situation would not be materially worse than the current one of people coming and going from the shop, or potentially being able to stand around any part of the patio. Concerns expressed about loss of privacy to

properties across the green at Low Green are completely unfounded given the distance from the end of the patio to the front of those properties is over 57m and there are already many windows in the properties along High Green which look across the green.

36. In respect of noise, properties adjacent and above will be sensitive to noisy activity from the premises. Some of those properties have habitable rooms to the front and single glazing. When the Inspector dismissed the appeal for outdoor seating in this same area in 2009 he specifically noted that it was the potential noise impact from commencement of the use at 08.30 and movement of tables and seating into the area at this time that would conflict with the quiet enjoyment which the occupiers of no.15 (adjacent) & 17c (above) might reasonably expect, particularly at weekends. This suggests it was the early morning activity which was of specific concern. This proposal only seeks to use the outdoor area from 11.00, thus avoiding early morning disturbance and to cease use at 17.00 Monday to Saturday and 16.00 on Sundays, avoiding early evening activity. Those hours are within typical business hours when the coffee shop would normally already be in busiest use. They are also possibly times when neighbours are most likely to be out, particularly in the week; although it is accepted neighbours wouldn't always be out and the occupiers of no.15 may want to use their garden at these times. It is also proposed to keep the tables and chairs outside to alleviate concerns about noise from setting up and taking down, although they might be taken away for storage during winter and brought back afterwards, which is an insignificant number of events in a year in respect of noise creating activity. The tables and chairs themselves should be wood or plastic, or have plastic feet to reduce noise from scraping on the ground and this could be secured in a condition.
37. Another important factor to take into consideration is that an outdoor seating area is most likely to be a seasonal use during the summer months and even then would be limited further by the weather generally (rain, cloud, temperature). Realistically, the actual number of days use in a year would probably be a relatively small proportion of the year meaning neighbours would not be subject to any unreasonably relentless or prolonged noise disturbance.
38. Taking all these factors into account, while there will be some associated noise from the seating area, typically from talking, the stir of a teacup, or movement of a chair, it will not be at unsociable times and frequency will be limited by the seasons and weather. The potential for current use of the patio, apart from seating, is also a factor that carries some weight in the balance of consideration. There is therefore no reason to believe that the potential noise arising from the proposed arrangement would be at a level and frequency that would cause significant harm to the living conditions of the properties adjacent and above. The significant weight that must be given to the support of business and economic growth is therefore considered to outweigh any less than significant harm to residential amenity in this case.
39. For all these reasons it is considered that the current proposal addresses previous reasons for refusal and the Planning Inspector's concerns on amenity grounds. Any impact on amenity would be within the bounds of reasonableness. It is therefore concluded that the proposed use of the patio as an outdoor seating area, limited to the east side and within the suggested times, as well as the likelihood that the amount of use of the patio would be naturally limited by the weather, would be a reasonable balance of the competing issues of supporting the needs of the business while also protecting neighbour amenity to a reasonable extent. The proposal is therefore in accordance with local plan policy GD1 and the national planning guidance in the NPPF in this respect.

Impact on the character, appearance and setting of the conservation area and listed buildings.

40. The property itself is Grade II listed, as are the adjoining buildings, and the property lies within the conservation area. Special regard must therefore be given to sections 72 and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, there would be no physical development involved in this proposal. Although the intention is to keep the tables and chairs outside during the summer months when the patio would be in use, the placing of tables and chairs within the patio would be temporary features, easily removable and would not involve any physical alteration of the listed building. The patio is naturally suited to the placing of chairs and tables and such temporary features, possibly including umbrellas, would not have a detrimental impact on the character and appearance of the conservation area, or the setting of the listed buildings. If anything, this would add some vitality into what is currently an empty and somewhat stark space. The comments from the Parish Council about removing the tables and chairs each night is noted, but this would not be necessary for the reasons above and in addition, would not be desirable from a residential amenity perspective because the Planning Inspector noted previously that the activity could create noise that would disturb neighbouring properties.
41. The proposal would not therefore cause harm to the significance of the relevant heritage assets and is in accordance with local plan policies GD1, BENV3, BENV4, as well as the national planning guidance in the NPPF in this respect.

Other issues

42. Some comments have been received about the potential for the presence of tables and chairs to lead to anti social behaviour and vandalism. There is no foundation for these assumptions and they should not carry weight as material considerations. There is no evidence that tables and chairs in gardens lead directly to anti social behaviour and vandalism. There are also other controls outside the planning system to deal with these matters.
43. Comments have also been received from neighbouring residents about how the proposal will potentially exacerbate competition for parking along the green, but the road is a public highway and no one has a given right to park directly outside their home. If someone chooses to drive a car, but does not have a private driveway on which to keep it, then he or she has to park it legally wherever they can. Neighbours may well have to park further from their property if customers' cars are parked in the road, but this can happen at present and there are other commercial premises nearby, like the hairdressers, post office and academy theatre, to which this applies as well. The coffee shop is however a local facility in the village centre, which is easily reached by walking and cycling. Through the week the majority of customers are local and customer car use is unlikely to be high. Use of the small outdoor seating area during the proposed hours and seasonally, should not itself exacerbate the situation to an unacceptable extent. Use of the patio for seating would normally be permitted development and the restriction was not originally placed for highway reasons.
44. Neighbours have also expressed concern that they will not be able to open windows at the front because of smells. However, given the nature of the coffee shop activity and that the outdoor seating would take place in an open environment

it is unlikely that smells would be of such an extent that they would make the neighbouring properties a completely undesirable place to live. While there may be smoking outside, there is nothing preventing this taking place at present.

45. Finally, although not a factor carrying any weight because condition 3 effectively removed permitted development rights for the outdoor seating on amenity grounds, Durham County Council does normally take a positive approach to outdoor seating for cafes on courtyards because of the benefits they bring to the vitality and economy of town and village centres, and regards it as an activity that doesn't normally require planning permission. The proposal has however been determined on its merits in respect of the impact on amenity and the surrounding area, as set out in this report.

CONCLUSION

46. The existing conditional restriction on outdoor seating was applied by the local planning authority to protect the amenity of neighbouring residential properties adjacent and above the premises.
47. Nevertheless, in assessing the particular details of this proposal under the changes in planning policy context introduced by the NPPF and in respect of material differences in the proposal to previously refused applications, it is considered that the proposed use of the patio as an outdoor seating area, limited to the east side only and within the suggested times, as well as the likelihood that the amount of use of the patio would be seasonal and naturally limited by the weather, would be a reasonable balance of the competing issues of supporting the needs of the business, bringing vitality to the premises and local economy, while also protecting neighbour amenity to a reasonable extent. In coming to this conclusion significant weight has been afforded to the key aims of the NPPF to support economic growth and the retention and development of local business. In addition, it is considered that the proposal would not have a detrimental impact on the character and appearance of the conservation area, or the setting of the listed buildings.
48. The proposal is therefore in accordance with local plan policies GD1, BENV3, BENV4, and the national planning guidance in the NPPF.

RECOMMENDATION

Recommendation that condition 3 of permission 6/2005/0327/DM is varied to allow outdoor seating on the east patio between the hours of 11.00am-17.00pm Monday to Saturday and 11.00am-16.00pm on Sundays, and subject to the original remaining conditions covering use of the premises as a whole:

1. The development hereby approved shall be carried out in strict accordance with the following approved plans:

Location Plan	Received 17 May 2013
Proposed Alterations	Received 8 July 2005
Proposed Outdoor Seating	Received 17 May 2013

Reason: To define the consent and ensure that a satisfactory form of development is obtained.

2. The use of the premises shall not be open to customers other than between the hours of 8.30am and 18.00pm.

Reason: In order to protect the residential amenities of the occupiers of adjoining residential properties. In accordance with Teesdale Local Plan Policy GD1.

3. External tables and seating shall only be placed within the eastern side of the front patio, as shown on the plans hereby approved, and notwithstanding the provisions of condition 1, the use of these external tables and chairs, including setting up or taking down, shall not be permitted other than between the hours of 11.00am-17.00pm Monday to Saturday and 11.00am-16.00pm on Sundays. The tables and chairs shall not have metal feet and shall only be removed from the patio for winter storage, repair or disposal.

Reason: In order to protect the residential amenities of the occupiers of adjoining residential properties. In accordance with Teesdale Local Plan Policy GD1.

4. The premises shall be used as a tea room, coffee shop, café or snack bar and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes Amendment) Order 2005, or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order without Modification).

Reason: To enable the Local Planning Authority to retain control over the development in the interests of residential amenity. In accordance with Teesdale Local Plan Policy GD1.

5. No mechanical extraction or ventilation systems shall be installed in the property without the prior formal written approval of the Local Planning Authority.

Reason: In order to protect the residential amenities of the occupiers of adjoining residential properties. In accordance with Teesdale Local Plan Policy GD1

REASONS FOR THE RECOMMENDATION

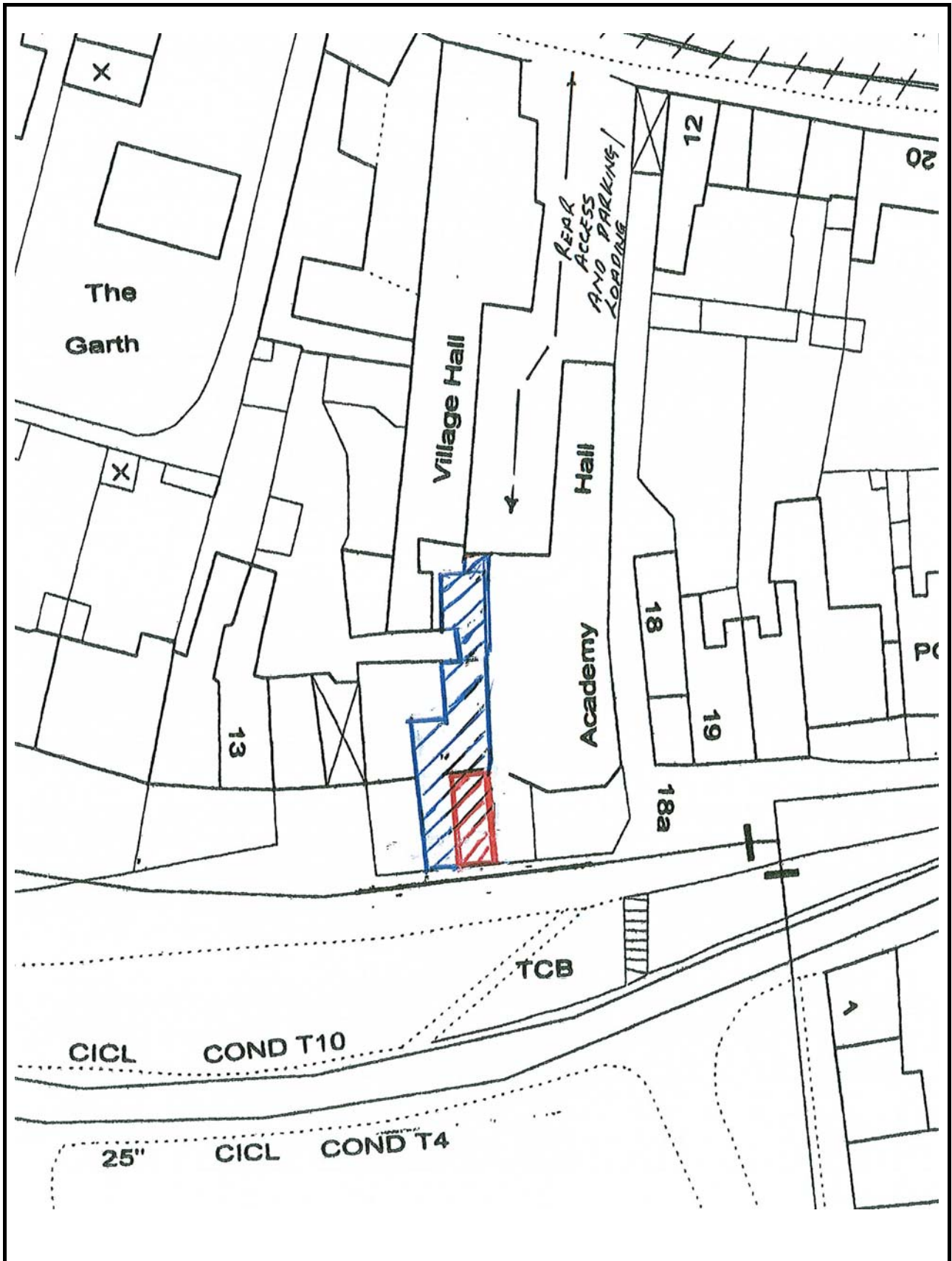
49. The recommendation to grant permission has been taken having regard to the policies and proposals in the Teesdale District Local Plan and to all the relevant material considerations, including the National Planning Policy Framework and the circumstances below.
50. In particular, it is considered that the proposed use of the patio as an outdoor seating area, limited to the east side and within the suggested times, as well as the likelihood that the amount of use of the patio would be naturally limited by the weather, would be a reasonable balance of the competing issues of supporting the needs of the business, bringing vitality to the premises and local economy, while also protecting neighbour amenity to a reasonable extent. In coming to this conclusion significant weight has been afforded to the key aims of the NPPF to support economic growth and the retention and development of local business. In addition, it is considered that the proposal would not have a detrimental impact on the character and appearance of the conservation area, or the setting of the listed buildings.
51. The proposal is therefore in accordance with local plan policies GD1, BENV3, BENV4, and the national planning guidance in the NPPF.


STATEMENT OF PROACTIVE ENGAGEMENT

52. In arriving at the recommendation to approve the application the Local Planning Authority has assessed the proposal against the NPPF and the Development Plan in the most efficient way to ensure a positive outcome through appropriate and proportionate engagement with the applicant and to ensure the development delivers wider public benefits.

BACKGROUND PAPERS

- Submitted Application Forms and Plans
- Teesdale Local Plan
- National Planning Policy Framework.
- Consultation Responses and representation
- Planning history



 <p>Durham County Council</p> <p>Planning Services</p>	<p>Variation of condition 3 of 6/2005/0327/DM to allow external seating on east side of front courtyard</p>	
<p>This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005</p>	<p>Site</p>	<p>The Laurels, 16 High Green, Gainford</p>
<p>Date 18/07/2013</p>	<p>Scale 1:2500</p>	